

**COOPERATIVE PURCHASING PROGRAM AGREEMENT
BY AND BETWEEN THE CITY OF DALLAS AND
THE CITY OF FRISCO, TEXAS**

THIS AGREEMENT is made and entered into by and between the **CITY OF DALLAS**, a home-rule municipal corporation located in Dallas County, Texas (hereinafter referred to as "Dallas"), and the **CITY OF FRISCO**, a home-rule municipal corporation located in Collin and Denton Counties, Texas (hereinafter referred to as "Frisco").

WHEREAS, Section 271.101 of the Texas Local Government Code, enables local governments to participate in cooperative purchasing programs with other local governments to purchase goods or services off contracts currently existing between another local government and a vendor, and such process satisfies the state law competitive bid requirements; and

WHEREAS, Dallas currently has contracts with various vendors for goods and services, and Frisco has a need for same and desires to enter into a Cooperative Purchasing Agreement with Dallas pursuant to Section 271.101, et seq. Texas Local Government Code; and

WHEREAS, Frisco agrees to prepare, execute, and administer its own contract with the vendor and the City of Dallas shall not be a party to Frisco's agreement with the vendor.

NOW, THEREFORE, Dallas and Frisco, for the mutual consideration hereinafter stated, agree as follows:

I.

EFFECTIVE DATE/TERM

This Agreement shall be effective upon execution by the parties. This Agreement shall continue in effect on an annual basis, unless one of the parties indicates in writing to the other party their intent to terminate this Agreement pursuant to Section III before the end of the contract year in question.

II.

DUTIES OF FRISCO AND DALLAS

Frisco agrees to participate in the Dallas cooperative purchasing program, and agrees that it will buy goods and services from those vendors that Dallas solicits for competitive bids or sealed proposals on Frisco's behalf at Frisco's request. Frisco also agrees to prepare, execute,

and administer its own contract for the goods or services in question with the vendor at the prices bid and accepted by Dallas, and Dallas shall not be a party to the agreement between vendor and Frisco. Dallas shall have no obligations for payment to vendor for any services or goods incurred by any party other than Dallas. Any payments owed the vendor for services or goods shall be paid directly by Frisco. Frisco will be responsible for the vendor's compliance with provisions relating to the quality of items and terms of delivery, warranty enforcement, and any other terms or conditions of its agreement with the vendor. Dallas agrees to comply with applicable Texas competitive bidding law in soliciting bids for goods and services on Frisco's behalf under this Agreement; Dallas reserves its right to reject any and all bids or sealed proposals and to proceed in the best interest of Frisco and Dallas on any solicitation for bids or sealed proposals.

III.

TERMINATION

This Agreement may be terminated at any time, with or without cause, by either party giving thirty (30) days advance written notice to the other party.

IV.

NOTICE

Notice as required by this Agreement shall be in writing delivered to the parties by facsimile or certified mail at the addresses listed below. Each party shall notify the other in writing within ten (10) days of any change in the information listed in this paragraph.

DALLAS

Ade Williams, Purchasing Agent
Assistant Director
Business Development and Procurement Services
City of Dallas
1500 Marilla - Room 3/f/South
Dallas, Texas 75201
Telephone: (214) 670-3326
Facsimile: (214) 670-4793

FRISCO

George Purefoy City Manager
Tom Johnston Purchasing Manager
City of Frisco
6101 Frisco Sq. Blvd.
Frisco, Texas 75034-
Telephone: (972) 292-5541
Facsimile: (972) 292 5586

V.

HOLD HARMLESS; MUTUAL RESPONSIBILITY

Each party does hereby agree to waive all claims against, release, and hold harmless the other party and its respective officials, officers, agents, employees, in both their public and

private capacities, from any and all liability, claims, suits, demands, losses, damages, attorneys fees, including all expenses of litigation or settlement, or causes of action which may arise by reason of injury to or death of any person or for loss of, damage to, or loss of use of any property arising out of or in connection with this contract.

Frisco and Dallas agree and acknowledge that this Agreement does not create a joint venture, partnership, or joint enterprise, and that each party is not an agent of the other entity and that each party is responsible in accordance with the laws of the State of Texas for its own negligent or wrongful acts or omissions and for those of its officers, agents or employees in conjunction with the performance of services covered under this Agreement, without waiving any governmental immunity available to Frisco or Dallas under Texas law and without waiving any defenses of Frisco or Dallas under Texas law. The provisions of this section are solely for the benefit of Frisco and Dallas and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

VI.

ENTIRE AGREEMENT

This Agreement (with all referenced Exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement of both parties, superseding all oral or written previous and contemporary agreements between the parties relating to matters set forth in this Agreement. Except as otherwise provided elsewhere in this Agreement, this Agreement cannot be modified without written supplemental agreement executed by both parties.

VII.

VENUE; GOVERNING LAW

This Agreement is performable in Dallas County, Texas. Exclusive venue in the event litigation is required to enforce rights or responsibilities under this Agreement shall be in Dallas County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.

VIII.**SEVERABILITY**

The provisions of this Agreement are severable. In the event that any paragraph, section, subdivision, sentence, clause, or phrase of this agreement shall be found to be contrary to the law, or contrary to any rule or regulation having the force and effect of the law, such decisions shall not affect the remaining portions of this Agreement. However, upon the occurrence of such event, either party may terminate this Agreement by giving the other party thirty (30) days written notice of its intent to terminate.

IX.**AUTHORITY TO SIGN / CITY COUNCIL AUTHORIZATION**

The undersigned officers and agents of the parties to this Agreement are duly authorized officials and possess the requisite authority to execute this Agreement on behalf of the parties hereto. Dallas has executed this Agreement pursuant to the duly authorized Resolution No. of the Dallas City Council on. Frisco has executed this Agreement pursuant to the duly authorized Frisco City Council Resolution No. dated.

X.**ASSIGNMENT AND SUBLETTING**

The parties agree that the rights and duties contained in this Agreement will not be assigned or sublet without the prior written consent of both parties.

XI.**INTERPRETATION OF AGREEMENT**

This is a negotiated Agreement. If any part of this Agreement is in dispute, the parties stipulate that the Agreement shall not be construed more favorably for either party.

XII.**ADMINISTRATIVE FEE**

Dallas contracts contain, or will contain, language that entitles Dallas to charge vendors an administrative fee to offset costs associated with administering contracts. The fee will be paid directly to Dallas by the vendor, and no other participant in this Agreement shall be entitled to any portion of the fee collected by Dallas.

XIII.
REMEDIES

No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy granted by law or equity; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Agreement may be waived without the express written consent of the parties. It is further agreed that one (1) or more instances of forbearance by either party in the exercise of its respective rights under this Agreement shall in no way constitute a waiver of those rights or of any breach of this Agreement.

XIV.
NOTICE OF CONTRACT CLAIM

This Agreement is subject to the provisions of Section 2-86 of the Dallas City Code, as amended, relating to requirements for filing a notice of a breach of contract claim against Dallas. Section 2-86 of the Dallas City Code, as amended, is expressly incorporated by reference and made a part of this Agreement as if written word for word in this Contract. Frisco shall comply with the requirements of this ordinance as a precondition of any claim relating to this Agreement, in addition to all other requirements in this Agreement related to claims and notice of claims.

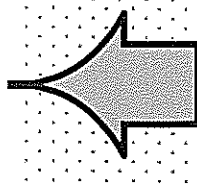
XV.
CAPTIONS

The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.

XVI.
COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument. If this Agreement is executed in counterparts, then it shall become fully executed only as of the execution of the last such counterpart called for by the terms of this Agreement to be executed.

EXECUTED in duplicate originals as of the ____ day of _____, 2008.



APPROVED AS TO FORM:

CITY OF FRISCO, TEXAS:

Claire E. Swann

Abernathy Roeder Boyd & Joplin P.C.
Claire E. Swann, City Attorney

By: _____
George Purefoy, City Manager

APPROVED AS TO FORM:

CITY OF DALLAS:

THOMAS P. PERKINS, JR.
City Attorney

MARY K. SUHM
City Manager

By: _____
Assistant City Attorney

By: _____
Assistant City Manager

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ____ day of _____, 2008 by **GEORGE PUREFOY**, City Manager of **The City of Frisco, Texas**, a home-rule municipal corporation, on behalf of said corporation.

Notary Public in and for State of Texas

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the ____ day of _____, 2008 by _____, Assistant City Manager of the **City of Dallas, Texas**, a home-rule municipal corporation, on behalf of said corporation.

Notary Public in and for State of Texas